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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 CITY OF COLTON, a California
16 municipal corporation, et al.,

Case No. ED CV 09-01864 PSG (SSx)

17 Plaintiffs,

[Consolidated with Case Nos. CV 09-
6630 PSG (SSx), CV 09-6632 PSG
(SSx), CV 09-07501 PSG (SSx), CV
09-07508 PSG (SSx), CV 10-00824
PSG (SSx), CV 05-01479 PSG (SSx)]

18 vs.
19 AMERICAN PROMOTIONAL
20 EVENTS, INC., et al.,

CONSENT DECREE

21 Defendants.

22
23 AND CONSOLIDATED ACTIONS
24
25

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, seeking injunctive relief and response costs incurred by the United States relating to the Rockets, Fireworks, and Flares Superfund Site in Rialto, California. Other parties filed CERCLA and/or state law claims in cases consolidated with the United States’ case (collectively, the “Consolidated Federal Action”).

B. On April 15, 2014, the Court ordered that Jimmy Chi Ho Wong, as legal trustee for the estate of Chung Ming Wong for decedent Chung Ming Wong be substituted in this action in place of the deceased Mr. Wong. (Dkt. No. 1872).

C. On June 15, 2015, the United States filed its second amended complaint (Dkt. No. 1959) asserting a CERCLA Section 107 claim against the Estate of Wong, as a successor and as an owner of part of the Site, as defined below, as well as an *in rem* claim under 42 U.S.C. § 9607(l) against the property owned by the Estate of Wong within the Site. In addition, the second amended complaint seeks a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Estate of Wong and the property subject to the United States' *in rem* action are jointly and severally liable to the United States for response costs and damages and that the finding will be binding on any subsequent action or actions to recover further response costs or damages incurred by the United States in connection with the Site.

D. Goodrich Corporation filed an amended complaint under CERCLA and state law against the Estate of Wong for: (1) contribution and cost recovery pursuant to CERCLA Sections 9607 and 9613; (2) indemnification and

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1 contribution pursuant to California Health & Safety Code Section 25363; (3)
2 declaratory relief pursuant to CERCLA Sections 9607 and 9613; (4) equitable
3 indemnification; (5) declaratory relief for equitable indemnification; (6)
4 contribution under state common law; (7) private nuisance; and (8) trespass. On
5 February 10, 2010, the case was transferred to this Court, and was assigned case
6 number CV 10-00824 PSG (SSx).

7 E. Prior to the entry of any consent decrees in the Consolidated Action,
8 on March 26, 2012, the Court found that the City of Colton “properly served”
9 Wong Chung Ming and Tung Chun Company and entered a default (vacated)
10 against those parties. (Dkt. No. 1410). In February 2014, Goodrich personally
11 served Jimmy Chi Ho Wong. (Dkt. No. 1860). Jimmy Chi Ho Wong, as the
12 representative of the Estate of Wong Chung Ming, was subsequently substituted
13 for all purposes in place of the deceased Chung Ming Wong. (Dkt. Nos. 1872,
14 1895, 1896). On June 20, 2014, the Estate of Wong Chung Ming waived personal
15 service of process solely as to the United States under the procedures set forth in
16 Rule 4 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4. Wong Chung
17 Ming (now the Estate of Wong) is and has been a party to the Consolidated
18 Action. (Dkt. No. 1896).

19 F. Settling Defendant as defined below, does not admit and specifically
20 denies: (1) any liability arising out of the transactions or occurrences alleged in
21 the claims or deemed by the Court in the Consolidated Federal Action; and (2) the
22 release or threatened release of Waste Material at or from the Site or the RABSP
23 (as defined in Section IV (Definitions)) constitutes, contributed to, or caused an
24 imminent or substantial endangerment to the public health or welfare or the
25 environment.

26 G. The United States, Goodrich, and the Estate of Wong recognize and
27 the Court by entering this Consent Decree finds, that this Consent Decree has been
28 negotiated by the Parties, as defined below, in good faith, that implementation of

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1 this Consent Decree will expedite the cleanup of the Site, will avoid prolonged
2 and complicated litigation, and that this Consent Decree is fair, reasonable, and in
3 the public interest.

4 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

5 **II. JURISDICTION**

6 1. This Court has jurisdiction over the subject matter of this action
7 pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. §§ 6973(a), 9607, and
8 9613(b); and also has personal jurisdiction over Settling Defendant. Solely for the
9 purposes of this Consent Decree and the underlying complaints, Settling
10 Defendant waives all objections and defenses that it may have to the jurisdiction
11 of the Court or to venue in this District. Settling Defendant, Goodrich, and United
12 Technologies shall not challenge entry or the terms of this Consent Decree or this
13 Court's jurisdiction to enter and enforce this Consent Decree.

14 **III. PARTIES BOUND**

15 2. This Consent Decree is binding upon the United States, Goodrich,
16 United Technologies, and Settling Defendant. Any change in ownership or
17 corporate or other legal status, including, but not limited to, any transfer of assets
18 or real or personal property, shall in no way alter the status or responsibilities of
19 Settling Defendant under this Consent Decree.

20 **IV. DEFINITIONS**

21 3. Unless otherwise expressly provided in this Consent Decree, terms
22 used in this Consent Decree that are defined in CERCLA or in regulations
23 promulgated under CERCLA shall have the meaning assigned to them in
24 CERCLA or in such regulations. Whenever terms listed below are used in this
25 Consent Decree or in any appendix attached hereto, the following definitions shall
26 apply:
27

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1 “160-Acre Area” shall mean the area located in San Bernardino County that
2 is bounded by West Casa Grande Drive on the north, Locust Avenue on the east,
3 Alder Avenue on the west, and an extension of Summit Avenue on the south. The
4 160-Acre Area is depicted generally on the map included in Appendix A.

5 “2010 Record of Decision” or “2010 ROD” shall mean the document
6 entitled “USEPA Superfund Interim Action Record of Decision” relating to the
7 Source Area Operable Unit, Rockets, Fireworks, and Flares Superfund Site, San
8 Bernardino County, CA, EPA ID: CAN000905945, dated September 30, 2010,
9 signed by the Assistant Director, Superfund Division, EPA Region 9, and all
10 attachments thereto.

11 “Basin Contaminants” shall mean any type of perchlorate; trichloroethylene
12 (“TCE”); carbon tetrachloride; chloroform; or methylene chloride; including any
13 breakdown or “daughter” products of the foregoing.

14 “CERCLA” shall mean the Comprehensive Environmental Response,
15 Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

16 “Certification of Completion of the Final Remedial Action” shall mean the
17 certification of completion of the remedial action associated with the Final Record
18 of Decision for the Site.

19 “Consent Decree” or “Wong Consent Decree” shall mean this Consent
20 Decree and all appendices attached hereto. In the event of conflict between this
21 Consent Decree and any appendix, this Consent Decree shall control.

22 “Consolidated Federal Action” shall mean *City of Colton v. American*
23 *Promotional Events, Inc., et al.*, Case No. ED CV 09-01864 PSG (SSx); *Goodrich*
24 *Corporation v. Chung Ming Wong, et al.*, Case No. CV 09-6630 PSG (SSx);
25 *County of San Bernardino, et al., v. Tung Chun Co., et al.*, Case No. CV 09-06632
26 PSG (SSx); *City of Rialto and Rialto Utility Authority v. United States*
27 *Department of Defense, et al.*, Case No. CV 09-7501 PSG (SSx); and *Emhart*
28 *Industries, Inc. v. American Promotional Events, Inc.-West, et al.*, Case No. CV

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1 09-07508 PSG (SSx), all of which were consolidated pursuant to an order issued
2 on January 20, 2010; and *United States of America v. Goodrich Corporation, et*
3 *al.*, Case No. 10-00824 PSG (SSx), which was consolidated with the previously
4 consolidated cases pursuant to an order issued on June 3, 2010; and *City of Colton*
5 *v. American Promotional Events, Inc., et al.*, Case No. ED CV 05-01479 PSG
6 (SSx).

7 “County” shall mean the County of San Bernardino and any of its present,
8 former, or future subdivisions, departments, commissions, agencies, or
9 instrumentalities.

10 “County Property” shall mean the property known as the Mid Valley
11 Sanitary Landfill, which is currently owned by the County of San Bernardino,
12 including those areas currently leased to Robertson’s Ready Mix. The County
13 Property is bounded by Summit Avenue on the north, generally by Alder Avenue
14 on the east (until Alder Avenue terminates at or within the Robertson’s Ready
15 Mix leasehold), generally by the municipal boundaries of the Cities of Fontana
16 and Rialto on the west except for a strip of land located in the City of Fontana, and
17 by Casmalia Street on the south. The County Property is depicted generally on
18 the map included in Appendix A.

19 “Day” or “day” shall mean a calendar day unless expressly stated to be a
20 working day. The term “working day” shall mean a day other than a Saturday,
21 Sunday, or federal holiday. In computing any period of time under this Consent
22 Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,
23 the period shall run until the close of business of the next working day.

24 “DOJ” shall mean the United States Department of Justice and its successor
25 departments, agencies, or instrumentalities.

26 “Effective Date” shall mean the date upon which this Consent Decree is
27 entered by the District Court as recorded on the District Court docket, or, if the
28 District Court instead issues an order approving the Consent Decree, the date such

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1 order is recorded on the District Court docket, whichever occurs first.

2 “EPA” shall mean the United States Environmental Protection Agency and
3 its successor departments, agencies, or instrumentalities.

4 “EPA Hazardous Substance Superfund” shall mean the Hazardous
5 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

6 “Final Record of Decision” shall mean the final Record of Decision (and all
7 attachments) for the Site that will be signed by EPA in the future, and after
8 lodging of this Consent Decree.

9 “Final Remedial Action” shall mean activities associated with
10 implementing the Final Record of Decision.

11 “Goodrich” shall mean Goodrich Corporation and its officers, directors and
12 employees acting in their official capacity.

13 “Interest” shall mean interest at the rate specified for interest on
14 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
15 § 9507, compounded annually on October 1 of each year, in accordance with 42
16 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
17 time the interest accrues. The rate of interest is subject to change on October 1 of
18 each year.

19 “Institutional Controls” or “ICs” shall mean Proprietary Controls and state
20 or local laws, regulations, ordinances, zoning restrictions, or other governmental
21 controls or notices that: (a) limit land, water, and/or resource use to minimize the
22 potential for human exposure to Waste Material at or in connection with the Site;
23 (b) limit land, water, and/or resource use to implement, ensure non-interference
24 with, or ensure the protectiveness of the remedial action; and/or (c) provide
25 information intended to modify or guide human behavior at or in connection with
26 the Site.

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1 “Modification” shall mean the United States’ and Goodrich’s modification
2 of the OU2/OU3 Consent Decree, which the United States and Goodrich are
3 jointly submitting to the Court for approval.

4 “OU2/OU3 Consent Decree” shall mean the Consent Decree involving the
5 United States, Goodrich, and United Technologies Corporation that was entered
6 on July 2, 2013. (Dkt. No. 1821).

7 “Paragraph” shall mean a portion of this Consent Decree identified by an
8 Arabic numeral or an upper or lower case letter.

9 “Parties” shall mean the United States, Goodrich, and Settling Defendant.

10 “Plaintiff” shall mean the United States.

11 “Proprietary Controls” shall mean easements or covenants running with the
12 land that: (a) limit land, water, or resource use and/or provide access rights, and
13 (b) are created pursuant to common law or statutory law by an instrument that is
14 recorded by the owner in the appropriate land records office.

15 “RABSP” shall mean the parcel of land originally containing the former
16 Rialto Ammunition Backup Storage Point, located in San Bernardino County,
17 California. The 160-Acre Area is within the geographic area of the RABSP. The
18 RABSP is depicted generally on the map included in Appendix A.

19 “RABSP Site” shall mean the RABSP and all areas where contamination
20 from the RABSP otherwise comes to be located.

21 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
22 §§ 6901, *et seq.*

23 “Rockets, Fireworks, and Flares Superfund Site” or “Site” formerly known
24 as the Locust Avenue Superfund Site or the B.F. Goodrich Superfund Site in San
25 Bernardino County, California, which includes the 160-Acre Area and all areas
26 where contamination from the 160-Acre Area otherwise comes to be located.

27 “Section” shall mean a portion of this Consent Decree identified by a
28 Roman numeral.

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1 “Settling Defendant” or “Estate of Wong” shall mean Jimmy Chi Ho Wong,
2 as representative of the Estate of Chung Ming Wong, as well as the Estate of
3 Wong’s heirs, successors and assigns.

4 “Settling Federal Agencies” shall mean any federal agency, department, or
5 instrumentality named or alleged to be liable for contamination in the
6 Consolidated Federal Action, including but not limited to the United States Army,
7 the Department of the Navy, the United States Air Force, the United States
8 Department of Defense, the Farm Credit Administration, the United States
9 Customs and Border Protection, the National Aeronautics and Space
10 Administration, the United States Department of Energy, Lawrence Livermore
11 National Laboratory, the United States Forest Service, and any other federal entity
12 that is alleged to have transported, disposed of, or released any Waste Material
13 within the area encompassed by the RABSP Area, as depicted in Appendix A, and
14 any of their predecessors or successors.

15 “State” shall mean the State of California.

16 “Stonehurst Property” shall mean the approximate 5-acre property in the
17 County of San Bernardino, County APNs 1133-07-105, 1133-07-106, and 1133-
18 07-107, collectively, located at 2298 West Stonehurst Drive, Rialto, California.
19 The Stonehurst Property is depicted generally on the map included in Appendix
20 A.

21 “Transfer” shall mean shall mean to sell, assign, convey, lease, mortgage,
22 or grant a security interest in, or where used as a noun, a sale, assignment,
23 conveyance, or other disposition of any interest by operation of law or otherwise.

24 “United States” shall mean the United States of America and each
25 department, agency, and instrumentality of the United States, specifically
26 including EPA and Settling Federal Agencies.

27 “United Technologies” shall mean the United Technologies Corporation
28 and its officers, directors and employees acting in their official capacity.

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“Waste Material” shall mean: (a) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous waste” under California law, including California Health & Safety Code §§ 25100, *et seq.*

7 “West Side Area” shall mean the County Property and the Stonehurst
8 Property. The West Side Area is depicted generally on the map included in
9 Appendix A.

“West Side Site” shall mean the West Side Area and all areas where TCE and perchlorate contamination from the West Side Area otherwise comes to be located.

13 “Wong Estate Parcel” shall mean those parcels of land comprising
14 approximately 62 acres with the Assessor’s Parcel Numbers (“APNs”) of: 0239-
15 192-14-0000, 0239-192-15-0000, 0239-192-16-0000, 0239-192-17-0000, and
16 0239-192-18-0000 commonly known as 3196 North Locust, Rialto, California,
17 which is part of the Site. The Wong Estate Parcel is depicted on a map included
18 in Appendix B.

V. STATEMENT OF PURPOSE

20 4. By entering into this Consent Decree, the mutual objectives of the
21 Parties are to avoid difficult and prolonged litigation and resolve claims as set
22 forth herein.

VI. SETTLEMENT OF RESPONSE COSTS

24 5. Payments. The Estate of Wong shall pay a total of five million nine
25 hundred thousand dollars (\$5,900,000) to resolve the litigation. Of the total
26 amount paid by the Estate of Wong, Plaintiff shall receive two million nine
27 hundred fifty thousand dollars (\$2,950,000). Subject to the Court's approval of
28 the Modification of the OU2/OU3 Consent Decree, Goodrich shall receive two

1 million nine hundred fifty thousand dollars (\$2,950,000) and any accrued interest
2 shall be shared equally by Plaintiff (50 percent) and Goodrich (50 percent). All
3 dollar amounts described in the Consent Decree are in United States Dollars
4 (“USD”).

5 a. On August 14, 2015, the Estate of Wong paid two million nine
6 hundred fifty thousand dollars (\$2,950,000) into the Registry of the Court for the
7 Central District of California (“Registry”). (Dkt. No. 1963). In the event that the
8 Consent Decree and Modification of the OU2/OU3 Consent Decree are finalized
9 and entered by the Court, within thirty (30) days of the Effective Date, the two
10 million nine hundred fifty thousand dollars (\$2,950,000) plus interest shall be
11 disbursed from the Registry and shared equally between Plaintiff (50 percent) and
12 Goodrich (50 percent). If the Modification is not approved by the Court within
13 twenty-one (21) days of the Effective Date of the Consent Decree, the Estate of
14 Wong’s settlement payments shall not be made directly to Goodrich but shall be
15 made in accordance with the terms of the existing OU2/OU3 Consent Decree.

16 b. On March 3, 2016, the Estate of Wong paid two million nine
17 hundred fifty thousand dollars (\$2,950,000) into the Registry. (Dkt. No. 1990).
18 In the event that the Consent Decree and Modification of the OU2/OU3 Consent
19 Decree are finalized and entered by the Court, within thirty (30) days of the
20 Effective Date, this additional two million nine hundred fifty thousand dollars
21 (\$2,950,000) plus interest shall be disbursed from the Registry and shared equally
22 between Plaintiff (50 percent) and Goodrich (50 percent). If the Modification is
23 not approved by the Court within twenty-one (21) days of the Effective Date of
24 the Consent Decree, the Estate of Wong’s settlement payments shall not be made
25 directly to Goodrich but shall be made in accordance with the terms of the existing
26 OU2/OU3 Consent Decree.

27 c. Nothing in this Consent Decree shall be construed to require
28 Goodrich or United Technologies to undertake any additional obligations, over

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1 and above those included in the OU2/OU3 Consent Decree or the Administrative
2 Order on Consent dated February 26, 2013.

3 6. Payment Instructions.

4 a. Any payments due Plaintiff pursuant to Section VI (Settlement
5 of Response Costs) shall be made in accordance with instructions provided
6 Settling Defendant by EPA or the Financial Litigation Unit (“FLU”) of the United
7 States Attorney’s Office for the Central District of California for disbursement
8 from the Registry.

9 b. Any payments due to Goodrich pursuant to Section VI
10 (Settlement of Response Costs), subject to the Court’s approval of the
11 Modification, shall be made in accordance with instructions provided to Settling
12 Defendant by Goodrich for disbursement from the Registry.

13 c. At the time of the final payment required by Subparagraphs 5a.
14 and 5b. after the Effective Date, Settling Defendant shall send notice to DOJ,
15 EPA, Settling Federal Agencies, and Goodrich that disbursement from the
16 Registry has been requested in accordance with Section XVIII (Notices and
17 Submissions), and to the EPA Cincinnati Finance Office by email at
18 acctsreceivable.cinwd@epa.gov, or by mail to:

19 EPA Cincinnati Finance Office
20 26 Martin Luther King Drive
21 Cincinnati, Ohio 45268

22 Such notice shall reference the Site/Spill ID Number 09JW, and DOJ Case
23 Number 90-11-2-09952.

24 d. The total amount of each disbursement to be made from the
25 Registry to Plaintiff shall be deposited by EPA into a Site Special Account
26 (Site/Spill ID Number 09JW) to be retained and used to conduct or finance
27 response actions at or in connection with the Site, and/or to be transferred by EPA
28 to the EPA Hazardous Substance Superfund.

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1 **VII. FAILURE TO COMPLY WITH PAYMENT OBLIGATIONS**

2 7. Interest on Payment. If Settling Defendant fails to request any
3 disbursement from the Registry required by Section VI (Settlement of Response
4 Costs) by the required due date, Interest shall accrue on the unpaid balance owed
5 by Settling Defendant from the date payment is due through the date of payment.
6 Interest and stipulated penalties shall continue to accrue on any unpaid amounts
7 until the total amount due has been received.

8 8. Stipulated Penalties.

9 a. If any amounts due Plaintiff are not requested for disbursement
10 from the Registry by their respective required date(s), Settling Defendant shall be
11 in violation of this Consent Decree and shall pay, as a stipulated penalty, in
12 addition to the Interest required by Paragraph 7, five thousand dollars (\$5,000) per
13 violation per day to the United States for each day such payment is late.

14 b. If Settling Defendant does not comply with the access and/or
15 Institutional Controls provisions of Section VIII (Access and Institutional
16 Controls), Settling Defendant shall be in violation of this Consent Decree and
17 shall pay to the United States, as a stipulated penalty, five thousand dollars
18 (\$5,000) per violation per day of such noncompliance.

19 c. Stipulated penalties are due and payable within thirty (30) days
20 after the date of the United States' demand for payment of the penalty or
21 penalties. All payments of stipulated penalties owed to the United States under
22 this Paragraph shall be identified as "stipulated penalties" and shall be made in
23 accordance with instructions provided Settling Defendant by the United States.
24 Such payment shall reference Site/Spill ID Number 09JW, and DOJ Case Number
25 90-11-2-09952. At the time of payment of a stipulated penalty for nonpayment to
26 the United States as described in Subparagraph 8a., Settling Defendant shall send
27 notice to DOJ and EPA that payment has been made in accordance with Section
28 XVIII (Notices and Submissions). Such notice shall reference Site/Spill ID

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1 Number 09JW and DOJ Case Number 90-11-2-09952.

2 d. Penalties shall accrue as provided in this Paragraph regardless
3 of whether the United States has notified Settling Defendant of the violation or
4 made a demand for payment, but need only be paid upon demand. All penalties
5 shall begin to accrue on the day after payment is due and shall continue to accrue
6 through the date of payment. Nothing in this Consent Decree shall prevent the
7 simultaneous accrual of separate penalties for separate violations of this Consent
8 Decree.

9 9. Payments made under this Section shall be in addition to any other
10 remedies or sanctions available to the United States by virtue of Settling
11 Defendant's failure to comply with the requirements of this Consent Decree.

12 10. Notwithstanding any other provision of this Section, the United
13 States may, in its unreviewable discretion, waive payment of any portion of the
14 stipulated penalties due to the United States pursuant to this Consent Decree.
15 Payment of stipulated penalties shall not excuse Settling Defendant from payment
16 as required by Section VI (Settlement of Response Costs) or from performance of
17 any other requirements of this Consent Decree.

18 **VIII. ACCESS AND INSTITUTIONAL CONTROLS**

19 11. Settling Defendant shall:

20 a. Commencing on the date of lodging of this Consent Decree,
21 and at no charge, provide the United States and its representatives (including EPA
22 and its contractors), and any potential responsible party conducting response
23 actions at the Site under EPA oversight (including, without limitation, the settling
24 work defendant in any other consent decree the United States has entered into or
25 shall enter into the Consolidated Federal Action, as well as their agents and
26 contractors), with access at all reasonable times, and, where feasible, with five (5)
27 working days' notice, to the Wong Estate Parcel for the purpose of conducting any
28 response actions related to the Site including, but not limited to, the following

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activities:

- (1) Monitoring of investigation, removal, remedial, or other response actions at the Site;

- (3) Conducting investigations relating to contamination at or near the Site;

- #### (4) Obtaining samples;

- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

- (6) Inspecting and copying records, operating logs,

contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XI (Access to Information);

- (7) Assessing Settling Defendant's compliance with this
Consent Decree;

- (8) Determining whether the Site, Wong Estate Parcel, or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

- (9) Implementing removal or remedial actions as selected by EPA, including but not limited to any potential capping of the Wong Estate Parcel or Site, or any portion(s) thereof and implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls; (a) installing, monitoring, and maintaining liquid, groundwater, soil gas and other wells or probes; and (b) installing, monitoring, and operating any monitoring and extraction system, including liquids and gas extraction systems.

b. Commencing on the date of lodging of this Consent Decree, refrain from using the Wong Estate Parcel in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial

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1 measures implemented pursuant to the 2010 ROD or to be implemented pursuant
2 to the Final Record of Decision.

3 c. Commencing on the date of lodging of this Consent Decree,
4 Settling Defendant shall provide EPA thirty (30) days notice if Settling Defendant
5 intends to disturb subsurface soils or sediments ten (10) or more inches below
6 ground surface in the portions of the Wong Estate Parcel identified in Appendix
7 B. If, in the future, EPA issues any removal or remedial decision document(s)
8 related to the Site, Settling Defendant hereby agrees to refrain from using the
9 Wong Estate Parcel, or any portion thereof specifically identified in any future
10 removal or remedial decision, in any manner that would interfere with or
11 adversely affect the implementation, integrity, or protectiveness of those future
12 measures to be implemented at the Site.

13 d. Settling Defendant also hereby agrees to implement any
14 Institutional Control(s), including but not limited to land or water use restrictions,
15 that may be selected by EPA for the Site or the Wong Estate Parcel, or any
16 portion(s) thereof, in any removal or remedial action affecting the Wong Estate
17 Parcel, or any portion(s) thereof.

18 e. Settling Defendant shall execute and record in the appropriate
19 land records office Proprietary Controls that: (i) grant a right of access to conduct
20 any activity regarding the Consent Decree and any future removal or remedial
21 action concerning the Site including, but not limited to, those activities listed in
22 Subparagraphs 11a. – c.; and (ii) grant the right to enforce any land/water use
23 restrictions required by Subparagraph 11d., including, but not limited to, any
24 land/water use restrictions listed in any future Institutional Control
25 Implementation and Assurance Plan. The Proprietary Controls shall be granted to
26 one or more of the following persons, as determined by EPA: (i) the United States
27 (ii) the State and its representatives; (iii) any settling work defendant in any other
28 consent decree the United States has entered into or shall enter into in the

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1 Consolidated Federal Action and their representatives; and/or (iv) other
2 appropriate grantees. The Proprietary Controls, other than those granted to the
3 United States, shall include a designation that EPA (and/or the State as
4 appropriate) is a third-party beneficiary, allowing EPA to maintain the right to
5 enforce the Proprietary Controls without acquiring an interest in real property. If
6 any Proprietary Controls are granted to Settling Defendant pursuant to this
7 Paragraph, then Settling Defendant shall monitor, maintain, report on, and enforce
8 such Proprietary Controls.

9 f. Settling Defendant has informed EPA that Settling Defendant
10 may seek to develop the Wong Estate Parcel and future development may include,
11 but is not limited to, greenbelts, park areas, landscaping, and attendant irrigation,
12 or other uses. If Settling Defendant seeks to develop the Wong Estate Parcel,
13 Settling Defendant must comply with this Consent Decree, including the
14 provisions of this Section. If Settling Defendant notifies EPA that Settling
15 Defendant intends to develop the Wong Estate Parcel, EPA may reasonably meet
16 with the Settling Defendant to discuss the impact of any Institutional Controls
17 upon future uses of the Wong Estate Parcel. The Parties acknowledge that it is
18 EPA's policy to support appropriate redevelopment and reuse of formerly
19 contaminated sites, and EPA will, in its discretion and in accordance with its
20 policies, provide technical information to affected decision-makers seeking to
21 understand the scope and protectiveness of the selected remedy as set forth in the
22 appropriate decision documents. It is understood that any removal or remedial
23 measures, including, but not limited to any capping to be imposed on all or part of
24 the Wong Parcel by EPA, will be selected in accordance with CERCLA and not
25 inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

26 12. If EPA determines that Institutional Controls on the Wong Estate
27 Parcel, including, but not limited to, environmental restriction covenants under
28 state or local laws, regulations, ordinances, or other governmental controls, are

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needed to implement any removal or remedial action selected by EPA, ensure the integrity and protectiveness thereof, ensure non-interference therewith, or otherwise protect public health or welfare and the environment, Settling Defendant shall cooperate with EPA's efforts to secure such Institutional Controls and/or governmental controls.

13. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering, inspection, and access authorities and rights, as well as all of its rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

14. Modification of the Land Use Restrictions.

a. If EPA determines that modifications or additions to the land/water use restrictions are necessary to carry out and maintain the effectiveness of any removal or remedial action, EPA may require that such modifications or additions be incorporated in the land/water use restrictions, provided, however, that a modification or addition may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the removal or remedial action selected by EPA.

b. If Settling Defendant objects to any modification or addition determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIII (Dispute Resolution), Paragraph 27. The land/water use restrictions shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any land/water use restrictions required by any modifications or additions incorporated in the land/water use restrictions in accordance with this Paragraph.

1 **IX. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF**
2 **REAL PROPERTY**

3 15. Settling Defendant shall, at least sixty (60) days prior to any Transfer
4 of any real property located at the Site, give written notice: (a) to the transferee
5 regarding the Consent Decree and any Institutional Controls regarding the real
6 property; and (b) to EPA and the State regarding the proposed Transfer, including
7 the name and address of the transferee and the date on which the transferee was
8 notified of the Consent Decree and any Institutional Controls.

9 16. Settling Defendant may Transfer any real property located at the Site
10 only if: (a) any Proprietary Controls required by Subparagraph 11e. have been
11 recorded with respect to the real property; or (b) Settling Defendant has obtained
12 an agreement from the transferee, enforceable by Settling Defendant and the
13 United States, to: (i) allow access and restrict land/water use, consistent with
14 Subparagraphs 11a. – d., (ii) record any Proprietary Controls on the real property,
15 consistent with Subparagraph 11e., and (iii) subordinate its rights to any such
16 Proprietary Controls, consistent with Subparagraph 11e., and EPA has approved
17 the agreement in writing. If, after a Transfer of the real property, the transferee
18 fails to comply with the agreement provided for in this Paragraph, Settling
19 Defendant shall take all reasonable steps to obtain the transferee's compliance
20 with such agreement. The United States may seek the transferee's compliance
21 with the agreement and/or assist Settling Defendant in obtaining compliance with
22 the agreement. Settling Defendant shall reimburse the United States for all costs
23 incurred, direct or indirect, by the United States regarding obtaining compliance
24 with such agreement, including, but not limited to, the cost of attorney time.

25 17. In the event of any Transfer of real property located at the Site,
26 unless the United States otherwise consents in writing, Settling Defendant shall
27 continue to comply with its obligations under the Consent Decree, including, but
28 not limited to, its obligation to provide and/or secure access, to implement,

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1 maintain, monitor, and report on Institutional Controls, and to abide by such
2 Institutional Controls.

3 **X. RELEASE OF EPA LIEN**

4 18. Upon the Effective Date and upon receipt by EPA and Goodrich of
5 all amounts required by Section VI (Settlement of Response Costs) and any
6 amounts due under Section VII (Failure to Comply with Payment Obligations),
7 EPA will file a release of all liens perfected on the Wong Estate Parcel pursuant to
8 Section 107(l) of CERCLA, 42 U.S.C. § 9607(l).

9 **XI. ACCESS TO INFORMATION**

10 19. Settling Defendant shall provide to EPA and the State, upon request,
11 copies of all records, reports, documents, and other information (including
12 records, reports, documents, and other information in electronic form) (hereinafter
13 referred to as "Records") within its possession or control or that of its contractors
14 or agents relating to activities at the Site or to the implementation of this Consent
15 Decree, including, but not limited to, sampling, analysis, chain of custody records,
16 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence,
17 or other documents or information regarding the Wong Estate Parcel or the Site.
18 Settling Defendant shall also make available to EPA and the State, for purposes of
19 investigation, information gathering, or testimony, its employees, agents, or
20 representatives with knowledge of relevant facts concerning the Site.

21 20. Business Confidential and Privileged Documents.

22 a. Settling Defendant may assert business confidentiality claims
23 covering part or all of the Records submitted to Plaintiff under this Consent
24 Decree to the extent permitted by and in accordance with Section 104(e)(7) of
25 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined
26 to be confidential by EPA will be afforded the protection specified in 40 C.F.R.
27 Part 2, Subpart B. If no claim of confidentiality accompanies Records when they
28 are submitted to EPA and the State, or if EPA has notified Settling Defendant that

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1 the Records are not confidential under the standards of Section 104(e)(7) of
2 CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such
3 Records without further notice to Settling Defendant.

4 b. Settling Defendant may assert that certain Records are
5 privileged under the attorney-client privilege or any other privilege recognized by
6 federal law. If Settling Defendant asserts such a privilege in lieu of providing
7 Records, it shall provide Plaintiff with the following: (1) the title of the Record;
8 (2) the date of the Record; (3) the name, title, affiliation (*e.g.*, company or firm),
9 and address of the author of the Record; (4) the name and title of each addressee
10 and recipient; (5) a description of the contents of the Record; and (6) the privilege
11 asserted by Settling Defendant. If a claim of privilege applies only to a portion of
12 a Record, the Record shall be provided to Plaintiff in redacted form to mask the
13 privileged portion only. Settling Defendant shall retain all Records that it claims
14 to be privileged until Plaintiff has had a reasonable opportunity to dispute the
15 privilege claim and any such dispute has been resolved.

16 c. No Records created or generated pursuant to the requirements
17 of this Consent Decree shall be withheld from Plaintiff on the grounds that they
18 are privileged or confidential.

19 **XII. RETENTION OF RECORDS**

20 21. Except for those documents that have been produced in the
21 Consolidated Federal Action, Settling Defendant shall preserve and retain all non-
22 identical copies of records, reports, or information now in its possession or
23 control, or that come into its possession or control, that relate in any manner to
24 response actions taken at the Site or the RABSP Site, or its or any other person's
25 liability under CERCLA with respect to the Site or RABSP Site, until ten (10)
26 years after EPA's Certification of Completion of the Final Remedial Action.
27 Settling Defendant must also retain, and instruct its contractors and agents to
28 preserve, for the same period of time specified above, all non-identical copies of

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1 the last draft or final version of any Records (including Records in electronic
2 form) now in its possession or control or that come into its possession or control
3 that relate in any manner to the implementation of Institutional Controls,
4 provided, however, Settling Defendant (and its contractors and agents) must
5 retain, in addition, copies of all data generated during the implementation of
6 Institutional Controls, if any, that are not contained in the aforementioned Records
7 required to be retained. Each of the above record retention requirements shall
8 apply regardless of any corporate retention policy to the contrary.

9 22. After the conclusion of the document retention period in the
10 preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least ninety
11 (90) days prior to the destruction of any such Records, and, upon request by EPA
12 or DOJ, Settling Defendant shall deliver any such Records to EPA. Settling
13 Defendant may assert that certain Records are privileged under the attorney-client
14 privilege or any other privilege recognized by federal law. If Settling Defendant
15 asserts such a privilege in lieu of providing Records, it shall provide Plaintiff with
16 the following: (a) the title of the Record; (b) the date of the Record; (c) the name,
17 title, affiliation (*e.g.*, company or firm), and address of the author of the Record;
18 (d) the name and title of each addressee and recipient; (e) a description of the
19 subject of the Record; and (f) the privilege asserted. If a claim of privilege applies
20 only to a portion of a Record, the Record shall be provided to Plaintiff in redacted
21 form to mask the privileged portion only. Settling Defendant shall retain all
22 Records that it claims to be privileged until the United States has had a reasonable
23 opportunity to dispute the privilege claim and any such dispute has been resolved
24 in Settling Defendant's favor. However, no Records created or generated
25 pursuant to the requirements of this Consent Decree or any other settlement with
26 EPA pertaining to the RABSP Site shall be withheld from the United States on the
27 grounds that they are privileged or confidential.

28 23. Settling Defendant certifies individually that, to the best of its

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1 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
2 discarded, destroyed, or otherwise disposed of any Records (other than identical
3 copies) relating to its potential liability regarding the Site since the earlier of
4 notification of potential liability by the United States or the State or the filing of
5 suit against it regarding the Site and that it has fully complied with any and all
6 EPA and State requests for information regarding the Site pursuant to Sections
7 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), Section 3007
8 of RCRA, 42 U.S.C. § 6927, and state law.

9

XIII. DISPUTE RESOLUTION

10 24. Unless otherwise expressly provided for in this Consent Decree, the
11 dispute resolution procedures of this Section shall be the exclusive mechanism to
12 resolve disputes regarding this Consent Decree. However, the procedures set
13 forth in this Section shall not apply to actions by the United States to enforce
14 obligations of Settling Defendant that have not been disputed in accordance with
15 this Section.

16 25. Any dispute regarding this Consent Decree shall in the first instance
17 be the subject of informal negotiations between the parties to the dispute. The
18 period for informal negotiations shall not exceed twenty (20) days from the time
19 the dispute arises, unless it is modified by written agreement of the parties to the
20 dispute. The dispute shall be considered to have arisen when one party sends the
21 other parties a written Notice of Dispute.

22 26. Statements of Position.

23 a. In the event that the parties cannot resolve a dispute by
24 informal negotiations under the preceding Paragraph, then the position advanced
25 by EPA shall be considered binding unless, within thirty (30) days after the
26 conclusion of the informal negotiation period, Settling Defendant invokes the
27 formal dispute resolution procedures of this Section by serving on the United
28 States a written Statement of Position on the matter in dispute, including, but not

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1 limited to, any factual data, analysis, or opinion supporting that position and any
2 supporting documentation relied upon by Settling Defendant. The Statement of
3 Position shall specify Settling Defendant's position as to whether formal dispute
4 resolution should proceed under Paragraph 27 or 28.

5 b. Within thirty (30) days after receipt of Settling Defendant's
6 Statement of Position, EPA will serve on Settling Defendant its Statement of
7 Position, including, but not limited to, any factual data, analysis, or opinion
8 supporting that position and all supporting documentation relied upon by EPA.
9 EPA's Statement of Position shall include a statement as to whether formal
10 dispute resolution should proceed under Paragraph 27 or 28. Within thirty (30)
11 days after receipt of EPA's Statement of Position, Settling Defendant may submit
12 a Reply.

13 c. If there is disagreement between EPA and Settling Defendant
14 as to whether dispute resolution should proceed under Paragraph 27 or 28, the
15 parties to the dispute shall follow the procedures set forth in the paragraph
16 determined by EPA to be applicable. However, if Settling Defendant ultimately
17 appeals to the Court to resolve the dispute, the Court shall determine which
18 paragraph is applicable in accordance with the standards of applicability set forth
19 in Paragraphs 27 and 28.

20 27. Record Review. Formal dispute resolution for disputes pertaining to
21 the selection or adequacy of any response action and all other disputes that are
22 accorded review on the administrative record under applicable principles of
23 administrative law shall be conducted pursuant to the procedures set forth in this
24 Paragraph. For purposes of this Paragraph, the adequacy of any response action
25 includes, without limitation, the adequacy or appropriateness of plans, procedures
26 to implement plans, or any other items requiring approval by EPA under this
27 Consent Decree, and the adequacy of the performance of response actions taken
28 pursuant to this Consent Decree. Nothing in this Consent Decree shall be

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1 construed to allow any dispute by Settling Defendant regarding the validity of the
2 2010 ROD's or the Final Record of Decision's provisions.

3 a. An administrative record of the dispute shall be maintained by
4 EPA and shall contain all statements of position, including supporting
5 documentation, submitted pursuant to this Section. Where appropriate, EPA may
6 allow submission of supplemental statements of position by the parties to the
7 dispute.

8 b. The Director of the Superfund Division, EPA Region IX, will
9 issue a final administrative decision resolving the dispute based on the
10 administrative record described in Subparagraph 27a. This decision shall be
11 binding upon Settling Defendant, subject only to the right to seek judicial review
12 pursuant to Subparagraphs 27c. and 27d.

13 c. Any administrative decision made by EPA pursuant to
14 Subparagraph 23b. shall be reviewable by this Court, provided that a motion for
15 judicial review of the decision is filed by Settling Defendant with the Court and
16 served on all Parties within ten (10) days after receipt of EPA's decision. The
17 motion shall include a description of the matter in dispute, the efforts made by the
18 parties to resolve it, the relief requested, and the schedule, if any, within which the
19 dispute must be resolved to ensure orderly implementation of this Consent Decree.
20 The United States may file a response to Settling Defendant's motion.

21 d. In proceedings on any dispute governed by this Paragraph,
22 Settling Defendant shall have the burden of demonstrating that the decision of the
23 Superfund Division Director is arbitrary and capricious or otherwise not in
24 accordance with law. Judicial review of EPA's decision shall be on the
25 administrative record compiled pursuant to Subparagraph 27a.

26 28. Formal dispute resolution for disputes that neither pertain to the
27 selection or adequacy of any response action nor are otherwise accorded review
28 on the administrative record under applicable principles of administrative law,

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1 shall be governed by this Paragraph.

2 a. Following receipt of Settling Defendant's Statement of
3 Position submitted pursuant to Paragraph 26, the Director of the Superfund
4 Division, EPA Region IX, will issue a final decision resolving the dispute. The
5 Superfund Division Director's decision shall be binding on Settling Defendant
6 unless, within ten (10) days after receipt of the decision, Settling Defendant files
7 with the Court and serves on the parties a motion for judicial review of the
8 decision setting forth the matter in dispute, the efforts made by the parties to
9 resolve it, the relief requested, and the schedule, if any, within which the dispute
10 must be resolved to ensure orderly implementation of the Consent Decree. The
11 United States may file a response to Settling Defendant's motion.

12 b. Notwithstanding Subparagraph 27d., judicial review of any
13 dispute governed by this Paragraph shall be governed by applicable principles of
14 law.

15 29. The invocation of formal dispute resolution procedures under this
16 Section shall not extend, postpone, or affect in any way any obligation of Settling
17 Defendant under this Consent Decree, not directly in dispute, unless EPA or the
18 Court agrees otherwise. Stipulated penalties with respect to the disputed matter
19 shall continue to accrue but payment shall be stayed pending resolution of the
20 dispute as provided in Paragraph 27. Notwithstanding the stay of payment,
21 stipulated penalties shall accrue from the first day of noncompliance with any
22 applicable provision of this Consent Decree. In the event that Settling Defendant
23 does not prevail on the disputed issue, stipulated penalties shall be assessed and
24 paid as provided in Paragraph 8.

25 **XIV. COVENANTS AND RESERVATIONS OF RIGHTS BY PLAINTIFF**

26 30. Covenants by Plaintiff. Except as specifically provided in Paragraph
27 31, Plaintiff covenants not to sue or to take administrative action against Settling
28 Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606

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1 and 9607(a) and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site.
2 With respect to present and future response costs, these covenants shall take effect
3 upon receipt by Plaintiff of all amounts required by Section VI (Settlement of
4 Response Costs) and any Interest or stipulated penalties due thereon under Section
5 VII (Failure to Comply with Payment Obligations). These covenants are
6 conditioned upon the satisfactory performance by Settling Defendant of its
7 obligations under this Consent Decree, including but not limited to, payment of all
8 amounts due under Section VI (Settlement of Response Costs), Section VII
9 (Failure to Comply with Payment Obligations), Section VIII (Access and
10 Institutional Controls), and Section IX (Notice to Successors-in-Title and
11 Transfers of Real Property). These covenants extend only to Settling Defendant
12 and do not extend to any other person.

13 31. General Reservations of Rights. Plaintiff and the federal natural
14 resource trustee reserve, and this Consent Decree is without prejudice to, all rights
15 against Settling Defendant with respect to all matters not expressly included
16 within the Covenants by Plaintiff in Paragraph 30. Notwithstanding any other
17 provision of this Consent Decree, Plaintiff and the federal natural resource trustee
18 reserve all rights against Settling Defendant with respect to:

19 a. claims based on a failure by Settling Defendant to meet its
20 requirements under this Consent Decree;

21 b. liability arising from the past, present, or future disposal,
22 release, or threat of release of Waste Material outside of the Site;

23 c. liability based on the ownership or operation of any portion of
24 the RABSP Site by Settling Defendant when such ownership or operation
25 commences after October 15, 2016, and there is a new release on or related to
26 such property;

27 d. liability based on Settling Defendant's transportation,
28 treatment, storage, or disposal, or the arrangement for the transportation,

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1 treatment, storage, or disposal of Waste Material at or in connection with the Site
2 after lodging of this Consent Decree;

3 e. liability for damages for injury to, destruction of, or loss of
4 natural resources, and for the costs of any natural resource damage assessments;
5 f. criminal liability; and
6 g. liability for violations of federal or state law which occur after
7 lodging of this Consent Decree.

8 32. EPA has determined, and the Court finds, that upon the Effective
9 Date, the Estate of Wong is a Further Settlor, Future Settlor, and Future Settling
10 Party as defined in the OU1 Consent Decree (Dkt. No. 1820) (*see, e.g.*, the
11 definition of Further Settlor and Paragraphs 120 and 125); the OU2/OU3 Consent
12 Decree (Dkt. No. 1821) (*see, e.g.*, the definition of Future Settling Party, and
13 Paragraphs 56, 60, 66, 109); and the Estate of Hescox Consent Decree (Dkt. No.
14 1869) (*see, e.g.*, Paragraphs 30 and 31).

15 33. The Parties further find, and the Court finds, that the Estate of Wong
16 “is or was a party,” “any party,” and “any other party” in or to the Consolidated
17 Action as described in the OU1 Consent Decree (Dkt. No. 1820) (*see, e.g.*,
18 Paragraphs 120 and 125); the OU2/OU3 Consent Decree (Dkt. No. 1821) (*see,*
19 *e.g.*, Paragraphs 109 and 114); and the Estate of Hescox Consent Decree (Dkt. No.
20 1869) (*see, e.g.*, Paragraphs 30 and 31).

21 **XV. COVENANTS AND RESERVATIONS OF RIGHTS BETWEEN**
22 **GOODRICH AND SETTLING DEFENDANT**

23 34. Except as specifically provided in Paragraph 36, Settling Defendant,
24 Goodrich, and United Technologies each release and covenant not to sue or take
25 administrative action against each other, pursuant to Sections 107(a) or 113 of
26 CERCLA, 42 U.S.C. §§ 9607(a) and 9613, Section 7002 of RCRA, 42 U.S.C.
27 § 6972, or any other federal or state statute or common law with respect to all
28 claims, of any kind, known and unknown, against Settling Defendant, Goodrich,

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1 or United Technologies in connection with the alleged release or threatened
2 release of any of the Basin Contaminants at, on, or under the RABSP Site. These
3 covenants and releases are also conditioned upon the satisfactory performance by
4 Settling Defendant and Goodrich of their obligations under this Consent Decree.

5 35. In releasing all unknown claims as set forth in Paragraph 34, Settling
6 Defendant, Goodrich, and United Technologies each expressly waive the
7 provisions of Section 1542 of the California Civil Code, which provides:

8 A general release does not extend to claims which the
9 creditor does not know or suspect to exist in his or her
10 favor at the time of executing the release, which if
11 known by him or her must have materially affected his
or her settlement with the debtor.

12 36. Settling Defendant, Goodrich, and United Technologies each reserve,
13 and this Consent Decree is without prejudice to, all rights against Settling
14 Defendant, Goodrich, and United Technologies with respect to:

15 a. liability of the breaching party for its failure to meet a
16 requirement of this Consent Decree;

17 b. liability based on the ownership or operation of any portion of
18 the RABSP Site when such ownership or operation commences after lodging of
19 this Consent Decree and there is a new release of a Waste Material on or related to
20 such property;

21 c. liability based on transportation, treatment, storage, or
22 disposal, or arrangement for transportation, treatment, storage, or disposal of a
23 Waste Material at or in connection with the RABSP Site, after lodging of this
24 Consent Decree;

25 d. liability arising from the past, present, or future disposal,
26 release or threat of release of a Waste Material outside of the RABSP Site;

27 e. liability arising from the release, threat of release, or disposal
28 of a Waste Material either within or outside of the RABSP Site, where such

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1 release, threat of release, or disposal occurs after the lodging of this Consent
2 Decree;

3 f. liability arising from past, present, or future releases or
4 threatened releases at the RABSP Site, where the Waste Material at issue is not a
5 Basin Contaminant;

6 g. liability related to bodily injury; and

7 h. claims for contribution whether based on federal or state
8 statutes or common law arising out of: (1) claims in *City of Riverside v. Black &*
9 *Decker (U.S.), Inc., et al.*, Case No. BC410878; (2) claims asserted by any person
10 or entity that was not a party to the Consolidated Federal Action on August 24,
11 2012; or, (3) claims for natural resource damages.

12 For purposes of Subparagraphs b., c., and e. of this Paragraph, migration of
13 existing Waste Material is not a new release or disposal of Waste Material into
14 soil, groundwater, or atmosphere.

15 **XVI. COVENANTS AND RESERVATIONS OF RIGHTS BY SETTLING**
16 **FEDERAL AGENCIES AND SETTLING DEFENDANT**

17 A. Covenants and Reservations of Rights by Settling Defendant as to Plaintiff.

18 37. Except as provided in Paragraph 38, Settling Defendant covenants
19 not to sue and agrees not to assert any claims or causes of action against Plaintiff,
20 or its contractors or employees, with respect to the Site and this Consent Decree,
21 including, but not limited to:

22 a. any direct or indirect claim for reimbursement from the
23 Hazardous Substance Superfund (established pursuant to the Internal Revenue
24 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112,
25 113, or any other provision of law;

26 b. any claims against the United States, including any
27 department, agency, or instrumentality of the United States under CERCLA
28 Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law

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1 regarding the Site, response actions at the Site, response costs incurred at the Site,
2 and this Consent Decree;

3 c. any claims arising out of response actions at or in connection
4 with the Site relating to the United States, including any claim under the United
5 States Constitution, the California Constitution, the Tucker Act, 28 U.S.C. § 1491,
6 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common
7 law;

8 d. any claim, whether express or deemed by court order, in the
9 Consolidated Federal Action; and

10 e. any direct or indirect claim for disbursement from the Site
11 Special Account.

12 38. These covenants and releases shall not apply to the United States in
13 the event the United States brings a cause of action or issues an order pursuant to
14 any of the reservations set forth in Paragraph 31, other than in Paragraph 31a.
15 (liability for failure to meet a requirement of the Consent Decree) or 31f. (criminal
16 liability), but only to the extent Settling Defendant's claims arise from the same
17 response action, response costs, or damages that the United States is seeking
18 pursuant to the applicable reservation.

19 39. Nothing in this Consent Decree shall be deemed to constitute
20 approval or preauthorization of a claim within the meaning of Section 111 of
21 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22 B. Covenants and Reservations of Rights between Settling Defendant and
23 Settling Federal Agencies.

24 40. Except as provided in Paragraph 42, Settling Defendant releases and
25 covenants not to sue or take administrative action against any of Settling Federal
26 Agencies, and each of Settling Federal Agencies releases and covenants not to sue
27 or take administrative action against Settling Defendant, pursuant to Sections
28 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, Section 7002 of

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1 RCRA, 42 U.S.C. § 6972, or any other state or federal statute or state or federal
2 common law with respect to all claims of any kind, known and unknown, in
3 connection with the alleged release or threatened release of any of the Basin
4 Contaminants at, on, or under the RABSP Site. With respect to present and future
5 liability, these covenants and releases shall take effect upon receipt by Plaintiff of
6 all payment amounts required by Paragraph 5 and any Interest or stipulated
7 penalties due thereon under Section VII (Failure to Comply with Payment
8 Obligations).

9 41. In releasing all unknown claims, Settling Defendant and Settling
10 Federal Agencies waive the provisions of Section 1542 of the California Civil
11 Code which provides:

12 A general release does not extend to claims which the
13 creditor does not know or suspect to exist in his or her
14 favor at the time of executing the release, which if
15 known by him or her must have materially affected his
or her settlement with the debtor.

16 42. Settling Defendant and Settling Federal Agencies reserve, and this
17 Consent Decree is without prejudice to, all rights against Settling Defendant and
18 Settling Federal Agencies with respect to:

19 a. liability of the breaching party for its failure to meet a
20 requirement of this Consent Decree;

21 b. liability based on the ownership or operation of any portion of
22 the RABSP Site when such ownership or operation commences after lodging of
23 this Consent Decree and there is a new release of a Waste Material on or related to
24 such property;

25 c. liability based on transportation, treatment, storage, or
26 disposal, or arrangement for transportation, treatment, storage, or disposal of a
27 Waste Material at or in connection with the RABSP Site, after lodging of this
28 Consent Decree;

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1 d. liability arising from the past, present, or future disposal,
2 release, or threat of release of a Waste Material outside of the RABSP Site;
3 e. liability arising from the release, threat of release, or disposal
4 of a Waste Material either within or outside of the RABSP Site, where such
5 release, threat of release, or disposal occurs after the lodging of this Consent
6 Decree;

7 f. liability arising from past, present, or future releases or
8 threatened releases at the RABSP Site, where the Waste Material at issue is not a
9 Basin Contaminant;

10 g. liability related to bodily injury; and
11 h. claims for contribution whether based on federal or state
12 statutes or common law arising out of: (1) claims in *City of Riverside v. Black &*
13 *Decker (U.S.), Inc., et al.*, Case No. BC410878; (2) claims asserted by any person
14 or entity that was not a party to the Consolidated Federal Action on August 24,
15 2012; or, (3) claims for natural resource damages.

16 For purposes of Subparagraphs b., c., and e. of this Paragraph, migration of
17 existing Waste Material is not a new release or disposal of Waste Material into
18 soil, groundwater, or atmosphere.

19 43. Claims against Other Parties in the Consolidated Federal Action.

20 Settling Defendant agrees not to assert any claims and to waive all claims or
21 causes of action (including but not limited to claims or causes of action under
22 Sections 107(a) and 113 of CERCLA) or any other federal or state law that it may
23 have for response costs relating to the Site and/or the West Side Site against any
24 other person who is or was a party in the Consolidated Federal Action, or has
25 otherwise reached a settlement with the United States relating to the Site. This
26 waiver shall not apply with respect to any defense, claim, or cause of action
27 Settling Defendant may have against any person if such person asserts a claim or
28 cause of action relating to the Site and/or the West Side Site against Settling

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1 Defendant.

2 44. Contribution Claims Arising from the Estate of Wong's Claims.

3 Except as otherwise provided in this Consent Decree, Goodrich, United
4 Technology and Settling Federal Agencies mutually release and covenant not to
5 sue or take administrative action against each other, pursuant to Sections 107(a) or
6 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, Section 7002 of RCRA, 42
7 U.S.C. § 6972, or any other state or federal statute or state or federal common law
8 with respect to all claims of any kind, known and unknown, in connection with the
9 alleged release or threatened release of any of the Basin Contaminants at, on, or
10 under the RABSP Site arising from or that were or could have been asserted by
11 the Estate of Wong in this Consolidated Action.

12 **XVII. EFFECT OF SETTLEMENT/CONTRIBUTION**

13 45. Except as provided in Paragraph 43, nothing in this Consent Decree
14 shall be construed to create any rights in, or grant any cause of action to, any
15 person not a Party to this Consent Decree. Except as provided in Section XV
16 (Covenants and Reservations of Rights between Goodrich and Settling Defendant)
17 and Section XVI (Covenants and Reservations of Rights by Settling Federal
18 Agencies and Settling Defendant), each of the Parties expressly reserves any and
19 all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C.
20 § 9613), defenses, claims, demands, and causes of action which it may have with
21 respect to any matter, transaction, or occurrence relating in any way to the RABSP
22 Site against any person not a Party hereto. Nothing in this Consent Decree
23 diminishes the right of the United States, pursuant to Section 113(f)(2), (3) of
24 CERCLA, 42 U.S.C. § 9613(f)(2), (3), to pursue any such persons to obtain
25 additional response costs or response action and to enter into settlements that give
26 rise to contribution protection pursuant to Section 113(f)(2).

27 46. The Parties agree, and by entering this Consent Decree this Court
28 finds, that this settlement constitutes a judicially approved settlement for purposes

WONG CONSENT DECREE

1 of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling
2 Defendant, Goodrich, and Settling Federal Agencies are entitled, as of the
3 Effective Date, to protection from contribution actions or claims as provided by
4 Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for
5 “matters addressed” in this Consent Decree. The “matters addressed” in this
6 Consent Decree are all response actions taken or to be taken and all response costs
7 incurred or to be incurred at or in connection with the Site or the West Side Site
8 by the United States or any other person; provided, however, that if Plaintiff
9 exercises any of the reservations in Section XIV (Covenants and Reservations of
10 Rights by Plaintiff), other than in Paragraphs 31a. (liability for failure to meet a
11 requirement of Consent Decree) or 31f. (criminal liability), the “matters
12 addressed” in this Consent Decree will no longer include those response costs or
13 response actions that are within the scope of the exercised reservation. Nothing in
14 this Paragraph shall limit or affect the ability of any Settling Defendant and/or
15 Settling Federal Agency to exercise their reservations of rights as to each other in
16 Paragraph 42.

17 47. The Parties further agree, and by entering this Consent Decree this
18 Court further finds, that the payments and obligations provided for in this Consent
19 Decree represent a good faith compromise of disputed claims and that the
20 compromise represents a fair, reasonable, and equitable resolution. With regard to
21 any claims for costs, damages, or other claims against the Parties, the Parties agree
22 and this Court finds that Settling Defendant, Goodrich, and Settling Federal
23 Agencies are entitled to contribution protection pursuant to the California Code of
24 Civil Procedure §§ 877 and 877.6, and any other applicable provision of federal or
25 state law, whether by statute or common law.

26 48. The Parties intend the broadest possible protection from contribution
27 actions provided by law for “matters addressed” in this Consent Decree.

28 49. Settling Defendant shall, with respect to any suit or claim brought by

WONG CONSENT DECREE

1 it for matters related to this Consent Decree after the date the Consent Decree is
2 lodged with the Court, notify EPA and DOJ in writing no later than sixty (60)
3 days prior to the initiation of such suit or claim. Settling Defendant also shall,
4 with respect to any suit or claim brought against it for matters related to this
5 Consent Decree, notify EPA and DOJ in writing within ten (10) days after service
6 of the complaint or claim upon it. In addition, Settling Defendant shall notify
7 EPA and DOJ within ten (10) days after service or receipt of any motion for
8 summary judgment, and within ten (10) days after receipt of any order from a
9 court setting a case for trial, for matters related to this Consent Decree.

10 50. In any subsequent administrative or judicial proceeding initiated by
11 the United States for injunctive relief, recovery of response costs, or other relief
12 relating to the Site, Settling Defendant shall not assert, and may not maintain, any
13 defense or claim based upon the principles of waiver, res judicata, collateral
14 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
15 contention that the claims raised by the United States in the subsequent
16 proceeding were or should have been brought in the instant case; provided,
17 however, that nothing in this Paragraph affects the enforceability of the covenants
18 not to sue set forth in Section XIV (Covenants and Reservations of Rights by
19 Plaintiff), Section XV (Covenants and Reservations of Rights between Goodrich
20 and Settling Defendant), and Section XVI (Covenants and Reservations of Rights
21 by Settling Federal Agencies and Settling Defendant).

22 **XVIII. NOTICES AND SUBMISSIONS**

23 51. Whenever, under the terms of this Consent Decree, notice is required
24 to be given or a document is required to be sent by one party to another, it shall be
25 directed to the individuals at the addresses specified below, unless those
26 individuals or their successors give notice of a change to the other Parties in
27 writing. Written notice as specified in this Section shall constitute complete
28 satisfaction of any written notice requirement of the Consent Decree with respect

WONG CONSENT DECREE

1 to EPA, DOJ, Settling Federal Agencies, Goodrich, and Settling Defendant,
2 respectively.

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4 As to DOJ:

5 Chief, Environmental Enforcement Section
6 Environment and Natural Resources Division
7 U.S. Department of Justice
8 P.O. Box 7611
9 Washington, D.C. 20044-7611
Re: DJ # 90-11-2-09952

10 As to EPA:

11 Remedial Project Manager, Rockets, Fireworks, and Flares Superfund Site
12 Attn: Wayne Praskins
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
15 San Francisco, California 94105

16 As to Settling Federal Agencies:

17 Chief, Environmental Defense Section
18 Environment and Natural Resources Division
19 U.S. Department of Justice
20 P.O. Box 7611
21 Washington, D.C. 20044-7611
Re: DJ # 90-11-6-17144/1

22 As to Goodrich Corporation:

23 David Platt
24 Assistant General Counsel
25 United Technologies Corporation
26 United Technologies Building
27 Hartford, Connecticut 06101

1 As to the Estate of Wong:

2 Mark Riera
3 Akerman LLP
4 725 South Figueroa Street, 38th Floor
5 Los Angeles, California 90017

6 Richard F. Bulger
7 Mayer Brown LLP
8 71 South Wacker Drive
Chicago, Illinois 60606

9

10 **XIX. RETENTION OF JURISDICTION**

11 52. This Court shall retain jurisdiction over this matter for the purpose of
12 interpreting and enforcing the terms of this Consent Decree.

13 **XX. INTEGRATION/APPENDICES**

14 53. This Consent Decree and its appendices constitute the final, complete
15 and exclusive agreement and understanding among the Parties with respect to the
16 settlement embodied in this Consent Decree. The Parties acknowledge that there
17 are no representations, agreements, or understandings relating to the settlement
18 other than those expressly contained in this Consent Decree. The following
19 appendices are attached to and incorporated into this Consent Decree:

20 “Appendix A” is the map of the RABSP, including the 160-Acre Area, the
21 Stonehurst Property, and the County Property.

22 “Appendix B” is the Wong Estate Parcel.

23 **XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

24 54. This Consent Decree shall be lodged with the Court for a period of
25 not less than thirty (30) days for public notice and comment. The United States
26 reserves the right to withdraw or withhold its consent if the comments regarding
27 the Consent Decree disclose facts or considerations that indicate that this Consent
28 Decree is inappropriate, improper, or inadequate. Goodrich, United Technologies,

WONG CONSENT DECREE

and Settling Defendant consent to the entry of this Consent Decree without further notice.

55. If for any reason this Court's entry of the Consent Decree is reversed on appeal, in whole or material part, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXII. TERMINATION

56. This Consent Decree shall be terminated when the United States determines Settling Defendant has satisfactorily completed performance of its obligations required by this Consent Decree. Upon such termination, the Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met. Termination of this Consent Decree shall not affect any remaining obligations under this Consent Decree including, but not limited to, those obligations described in Section VIII (Access and Institutional Controls), Section IX (Notice to Successors-in-Title and Transfers of Real Property), Section XIV (Covenants and Reservation of Rights by Plaintiff), Section XV (Covenants and Reservations of Rights between Goodrich and Settling Defendant), Section XVI (Covenants and Reservations of Rights by Settling Federal Agencies and Settling Defendant), Section XVII (Effect of Settlement/Contribution), and Section XII (Retention of Records).

XXIII. FINAL JUDGMENT

57. The United States, Goodrich, and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

WONG CONSENT DECREE

1 58. The Court finds that there is no just reason for delay of entry of this
2 Consent Decree, and therefore enters this judgment as a final judgment under Fed.
3 R. Civ. P. 54 and 58.

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5 SO ORDERED THIS 5th DAY OF December, 2017

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HONORABLE PHILIP S. GUTIERREZ
United States District Judge

Respectfully submitted,

FOR THE UNITED STATES:

Dated: 7/17/17

Bru A Dern

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment & Natural Resources Division

Dated: _____

JAMES R. MacAYEAL
BRADLEY R. O'BRIEN
U.S. Department of Justice
Environmental Enforcement Section

Of Counsel:

MICHELE BENSON
United States Environmental Protection Agency
Region IX
San Francisco, California

Attorneys for Plaintiff UNITED STATES OF AMERICA

WONG CONSENT DECREE

1 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:
2

3
4 Dated: 5/22/2017

5 By: 
6 ENRIQUE MANZANILLA
7 Director, Superfund Division, Region IX
8 U.S. Environmental Protection Agency
9 75 Hawthorne St.
10 San Francisco, California 94105

11 Dated: 5/15/2017

12 By: 
13 MICHELE BENSON
14 Assistant Regional Counsel
15 U.S. Environmental Protection Agency
16 Region IX
17 75 Hawthorne St.
18 San Francisco, California 94105

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WONG CONSENT DECREE

1 FOR GOODRICH CORPORATION:

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3 Dated: May 5, 2017

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Christopher Tad -

10 Attorney for GOODRICH CORPORATION

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WONG CONSENT DECREE

1 FOR JIMMY CHI HO WONG, Representative of the ESTATE OF CHUNG
2 MING WONG:

3 Akerman LLP
4 Mayer Brown LLP

5

6 Dated: April 18, 2017

7 
8 By MARK RIERA
9 Akerman LLP

10

11 Attorneys for Defendant JIMMY CHI HO WONG, Representative of the
12 ESTATE OF CHUNG MING WONG

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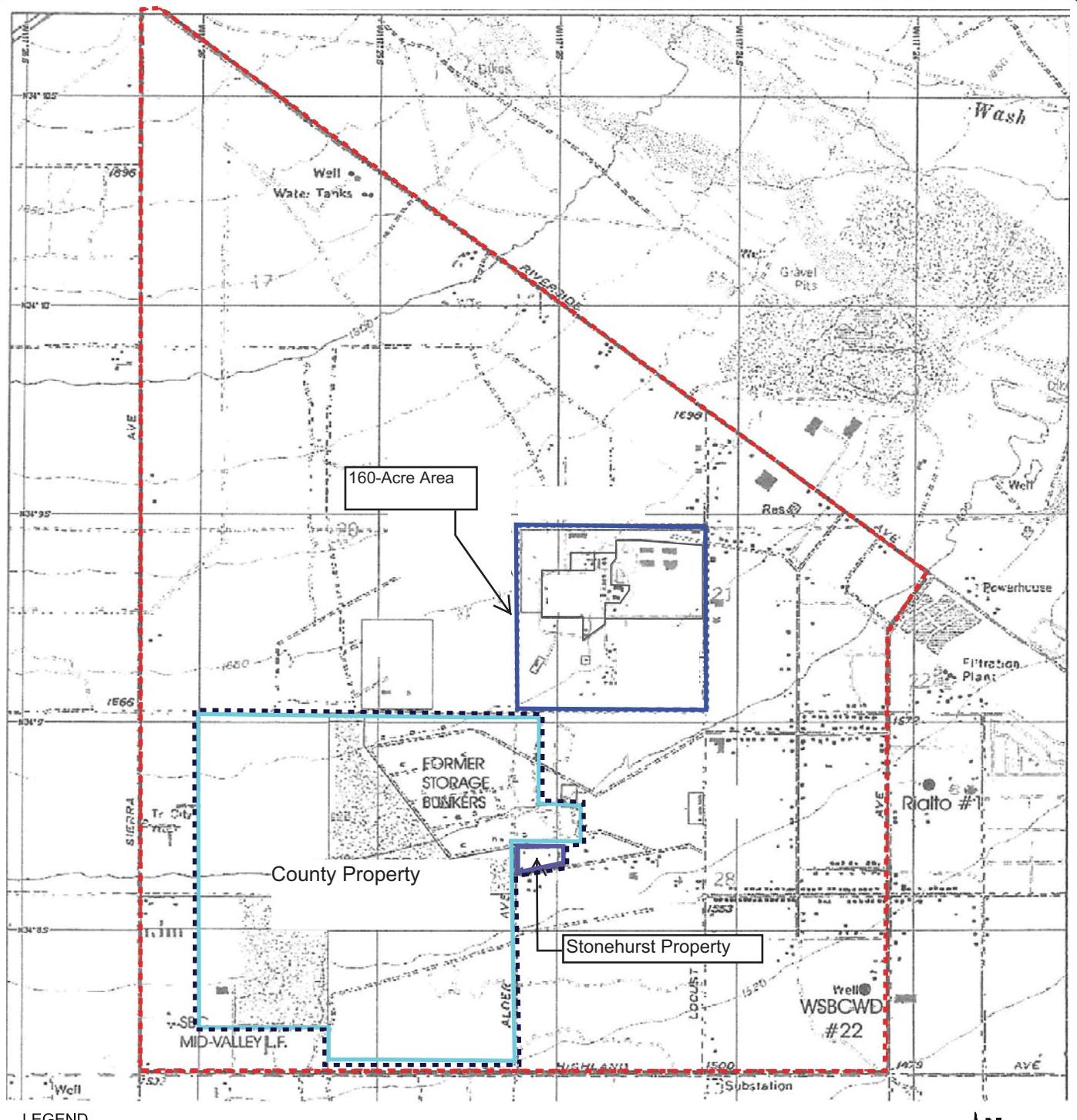
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WONG CONSENT DECREE

Appendix A

APPENDIX A



LEGEND

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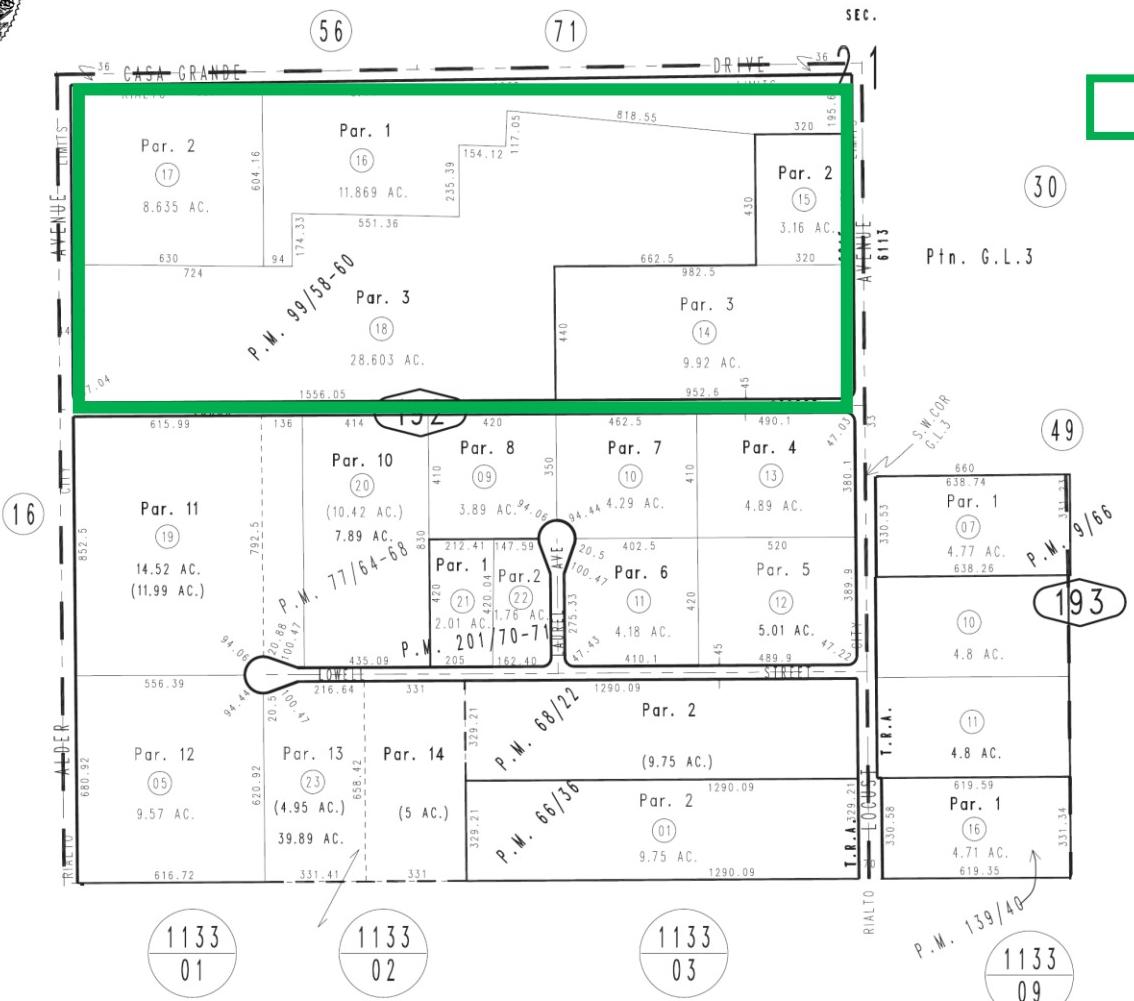
----- **West Side Area**

Rialto Ammunition Backup Storage Point (“RABSP”)

NOT TO SCALE

Appendix B

THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.



City of Rialto
Tax Rate Area
6015 6113

0239 - 19

1" = 400

Area where Settling Defendants shall provide EPA notice if they intend to disturb subsurface soils or sediments